

CHAPTER 45-11 FICTITIOUS PARTNERSHIP NAME

45-11-01. Partnership - Use of fictitious name.

1. As used in this section, "fictitious name" means a name assumed to identify a partnership and which does not include in its name:
 - a. The true name of each organizational partner;
 - b. The first name and surname of each partner; or
 - c. The surname of each partner, repeating a surname if more than one partner has the same surname.
2. Any partnership transacting business in this state under a fictitious name or under a designation that does not show the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred fifty dollars. A limited partnership or a foreign limited partnership transacting business under a name filed under chapter 45-10.2 and as provided in section 45-11-03 or a partnership transacting business under a name filed under section 45-13-05 is not required to file a fictitious name certificate under this section.
3. The fictitious name:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. May not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of any of those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".
 - c. May not be the same as or deceptively similar to any name reserved or registered with the secretary of state unless there is filed with the fictitious name certificate a written consent from the holder of the similar name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
 - (1) Any corporate name;
 - (2) Any limited liability company name;
 - (3) Any trade name;
 - (4) Any other fictitious partnership name;
 - (5) Any limited partnership name;
 - (6) Any limited liability partnership name;
 - (7) Any limited liability limited partnership name; or
 - (8) Any trademark or service mark.

45-11-02. How certificate executed - Content.

A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by one or more of the general partners. The certificate must state the fictitious name, a brief description of the nature of business in which the partnership is engaged in this state, the names in full and principal addresses of all the general partners, and the address of the principal place of business.

45-11-02.1. Electronic filing of fictitious name certificate.

A partnership may file a fictitious name certificate by electronic communication with the secretary of state. The following definitions apply to electronic fictitious name certificate filings with the secretary of state:

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic communication" means any form of communication acceptable to the secretary of state, not directly involving the physical transmission of paper:

- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
3. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
5. "Legal recognition" means a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a provision of this chapter requires:
 - a. A record to be in writing, an electronic record satisfies the requirement.
 - b. A signature, an electronic signature satisfies the requirement.
6. "Signed" means that the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, and is communicated by a method or medium of communication acceptable to the secretary of state.

45-11-03. Foreign partnership permitted to use fictitious name.

A commercial partnership established and transacting business in a place without the United States may use in this state the partnership name used by it there, without filing the certificate prescribed in section 45-11-01, although it is fictitious or does not show the names of the persons interested as partners in such business.

45-11-03.1. Registration of general partner.

A general partner must be registered separately with the secretary of state at the time of filing a fictitious name certificate whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;
3. Limited partnership;
4. General partnership using a fictitious name; or
5. Any other organization that has a registration responsibility with the secretary of state.

45-11-04. Penalty for unlawful use of fictitious name.

Persons doing business as partners contrary to the provisions of section 45-11-01 may not maintain an action on, or an account of, any contracts made or transactions had in their partnership name in any court of this state until they have filed the certificate required by section 45-11-01. If such partners comply with such provisions at any time, they thereupon have the right to maintain an action on all such partnership contracts and transactions entered into prior to, as well as after, such compliance.

45-11-04.1. Renewal.

A fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the partnership on forms prescribed by the secretary of state which are sent to the address of the principal place of business at least ninety days before the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly

return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If the statement of renewal reflects a change of membership, the statement of renewal may not be filed until payment of the fees required for these changes are paid as required by section 45-11-05.1. If a partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of the cancellation must be mailed to the address of the principal place of business.

45-11-05. Amended certificate required when members changed.

Whenever there is a change in the general partners who are members of a partnership transacting business in this state under a fictitious name, or in a designation which does not show the names of the persons interested as general partners in the business, except in a case mentioned in section 45-11-03, a new certificate must be filed with the secretary of state as required by this chapter upon the formation of the partnership. The secretary of state shall receive the new certificate as an amended certificate and may not require the old certificate to be canceled.

45-11-05.1. Change of name or address of member.

1. Any member named on a fictitious name certificate that effects a name change must record that name change with the secretary of state. The secretary of state must record the name change upon the payment of twenty-five dollars and filing of the following:
 - a. A notarized statement reciting the name change if the member is an individual.
 - b. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the member is a corporation or limited partnership incorporated or organized in another state or country which does not have a certificate of authority to transact business in North Dakota.
 - c. An amendment or application for amended certificate of authority for a member that is a corporation, a limited liability company, a limited partnership, a limited liability partnership, or a limited liability limited partnership registered with the secretary of state.
2. A registrant shall notify the secretary of state in writing without a filing fee when effecting a change of address. An annual report from a corporation, a limited liability company, a limited partnership, a limited liability partnership, or a limited liability limited partnership filed by the secretary of state which reflects a change of address of the principal place of business of the member may serve as such notice.

45-11-06. Duty of secretary of state regarding fictitious name certificate.

The secretary of state shall keep an alphabetical file of the fictitious names filed with the secretary of state under this chapter. The secretary of state may destroy all fictitious name certificates or renewals one year after expiration.

45-11-07. Certified copy used as evidence.

A copy of the entry of the secretary of state relating to a partnership certificate, made as directed in section 45-11-01, when certified by the secretary of state, is presumptive evidence of the facts stated therein.

45-11-08. Unlawful use of fictitious partnership name.

It is unlawful for any person to transact business in the name of another person, as a partner, who is not interested in that business.

45-11-08.1. Principal place of business.

Each partnership which files a fictitious name certificate shall have and continuously maintain on file in the office of the secretary of state an address of the principal place of

business, which must also serve as a mailing address. The address of the principal place of business may be changed by notifying the secretary of state. The notification must contain the name of the partnership, the state or country of organization, and the new address of the principal place of business.

45-11-08.2. Cancellation.

The secretary of state shall cancel:

1. Any fictitious name filed before August 1, 1997, by a limited liability partnership upon written request for cancellation, from one or more partners, without a filing fee.
2. Any other fictitious name upon written request for cancellation, from one or more partners, with the filing fee of ten dollars.
3. Any fictitious name when the registrant is a limited partnership, a limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

45-11-09. General penalty.

Any person violating any provision of this chapter for which another penalty is not specifically set forth shall be guilty of a class A misdemeanor.

45-11-10. Secretary of state - Exempt records.

Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is an exempt record as defined by subsection 5 of section 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any social security number or federal tax identification number the secretary of state determines to be a closed record before a copy of any document is released to the public.